period or at least as soon as possible after receiving the same instead of haggling over the inclusion of a few items of furniture at a time when it was important for them to conclude the sale at the earliest moment especially if, as the first plaintiff said, land values were rising rapidly.

As I have said, AB16 does not create a binding contract as between the parties. A contract would not, on the facts, have come into being until AB1-12 (the agreement for sale) had been executed. I have nevertheless dealt with matters such as waiver raised by counsel for the plaintiffs because it seems to me that he has completely misunderstood AB16, especially Clause 4, as to time being of the essence of the agreement which he thought was not the agreement of 21st July 1969 but the agreement for sale which had yet to be executed.

I agree with the submission by counsel for the defendants that, pending the execution of the agreement for sale at AB1-12, the parties were still in the stage of negotiations and that no binding contract had yet been concluded between them. I do not accept the proposition that by their conduct, the defendants evinced an intention to affect any legal relations by the concessions they made, whilst pressing for execution of AB1-12, during such negotiations for the simple reason that there was no contract between them. (See *Charles Rickards Ltd.* v. *Oppenhaim*[3] at 623 *et seq. per* Denning L.J.).

Having decided that AB16 does not create a legally binding contract, I have no alternative but to dismiss the claim by the plaintiffs.

Judgment will be entered for the defendants with costs.

Judgment for the defendants.

Solicitors: *M. N. Samy; Lee & Lee.*

HENG YIK FANG v. PUBLIC PROSECUTOR

[A.CrJ. (Wee Chong Jin C.J.) March 14, 1973]

[Singapore — Magistrate's Appeal No. 70 of 1972]

Copyright — Unauthorised reproductions of gramophone records in the form of cassettes and cartridge tapes — Whether "pirated copies" — Copyright (Gramophone Records and Government Broadcasting) Act (Cap. 188), ss. 2 and 3.

In this case the appellant had been convicted on a charge of possessing for sale pirated copies of certain gramophone records which were protected by copyright. It was alleged that the appellant had in her possession for sale unauthorised cartridge and cassette tape reproductions of the gramophone records. It was argued on appeal that the cartridges and cassette tapes did not come within the definition of "pirated copies".

Held: (1) the cartridges and cassette tapes found in the possession of the appellant came within the definition of "pirated copies" in the Copyright (Gramophone Records and Government Broadcasting) Act;

(2) as the learned magistrate had found that the cartridges and cassette tapes were pirated copies of the copyrights and the appellant had not shown on the balance of probabilities that she had no reason to suppose that she was dealing with pirated copies and that in all respects she had acted innocently, there was no reason to interfere with the findings of the learned magistrate. Therefore the appeal should be dismissed.

MAGISTRATE'S CRIMINAL APPEAL.

L. S. Fernando for the appellant.

Lawrence Ang (Deputy Public Prosecutor) for the respondent.

Wee Chong Jin C.J.: The appellant is appealing against her conviction on a charge of possessing for sale pirated copies of certain gramophone records which are protected by copyright. The charge reads as follows: —

"You, Heng Yik Fang,
are charged that you, on or about the 3rd day of August, 1971, at about 1.45 p.m. at 'Golden Sound Record Company', No. 418, North Bridge Road, Singapore, did have in your possession for sale pirated copies of certain gramophone records, to wit: —

(a) 4 cartridges & 32 cassette tapes containing E.M.I. recordings and

(b) 9 cassette tapes containing Decca recordings

and you have thereby committed an offence punishable under section 3(1) of the Copyright (Gramophone Records and Government Broadcasting) Act Chapter 188, 1970 Edition".

The facts are briefly these. E.M.I. are the owners of the subsisting copyright in five gramophone records and Decca are the owners of the subsisting copyright in two gramophone records from which reproductions were made without their consents into the form of cassettes and cartridge tapes. The firm of Golden Sound Record Company, of which the appellant is the sole proprietress, were offering for sale at No. 418 North Bridge Road, the cassette tapes and cartridges which are the subject matter of the charge. The magistrate found that these cassette tapes and cartridges were reproductions made without the consent of E.M.I. and Decca from the gramophone records of which E.M.I. and Decca have subsisting copyright.

It is contended on the appellant's behalf that she has committed no offence under section 3(1) of the Copyright (Gramophone and Government Broadcasting) Act (hereinafter referred to as "the Act") because a reproduction into the form of a cassette tape or cartridge of the contents of a gramophone record is not a pirated copy of such gramophone record within the definition of "pirated copies" in section 2 of the Act. Section 2 reads thus: —

"2. In this Act, unless the context otherwise requires —
'gramophone record' means the material first embodying the recording of a sequence of sounds capable, by the use of that material, of being automatically reproduced aurally, but does not include a sound track associated with a cinematograph film;

'pirated copies', in relation to any gramophone record, means any copies of such record made or reproduced without the consent lawfully given by the owner of the copyright in such record".

The argument advanced in support of the contention is that the definition of "pirated copies" in the Act, giving the words used their natural meaning, does not even by implication, bring cartridges or cassette tapes within its ambit. As I understand counsel's argument, he is saying that a reproduction of the

contents of a gramophone record into the form of a cartridge or a cassette tape is not a pirated copy of such gramophone record within the definition contained in the Act. In other words the contention is that only a reproduction of the contents of a gramophone record into the form of a gramophone record and in no other form would come within the definition. I am unable to accept this contention. In my opinion the definition must be read in the context of the Act as a whole. The Act is an enactment dealing specifically with one subject matter, namely, the provision of penalties for infringement of copyrights in gramophone records and to permit Government to broadcast by radio or television musical works or gramophone records without infringing any copyright. The Act creates one offence only, namely, by providing that any person "who makes, reproduces, imports for sale, sells, exposes or offers for sale, or has in his possession for sale, any pirated copies of any gramophone record, shall be guilty of an offence" and provides the penalty for such offence. The Act does not leave the expression "gramophone record" to be construed in its ordinary dictionary meaning but gives it a much wider meaning by defining it in section 2 (see *supra*).

Accordingly, in my judgment the cartridge and cassette tapes found in the possession of the appellant come within the definition of "pirated copies" in the Act.

Another contention put forward is that the magistrate ought to have found, on the evidence, that the appellant had shown on the balance of probabilities that at the time of the commission of the offence she had no reason to suspect that she was dealing with pirated copies and that in all respects she had acted innocently as provided by section 3(2) of the Act. This is a pure question of fact and in my opinion there was abundant evidence before the magistrate to entitle him to reject this defence.

Yet another contention urged before me is that on the evidence as a whole there was a doubt as to whether the cartridges and cassette tapes in question were pirated copies of the E.M.I. and Decca copyrights. This again is a pure question of fact and there was clear evidence to justify this particular finding of fact.

The last contention is that the fine imposed of $500 was manifestly excessive but in my opinion there is clearly no substance in this contention having regard to all the facts before the magistrate.

The appeal against conviction and sentence is dismissed.

Appeal dismissed.

Solicitors: *Ironside & de Souza.*

KONINKLIJKE BUNGE N.V. v. SINITRADA CO. LTD.

[O.C.J. (Winslow J.) March 23, 1973]

[Singapore — Originating Summons No. 244 of 1971]

Practice and Procedure — Foreign judgment — Registration of English judgment — Application to set aside judgment — Whether parties had agreed to arbitration and to accept jurisdiction of English courts — Reciprocal Enforcement of Commonwealth Judgments Act (Cap. 24), s.3(2)(a) and (b) — R.S.C. 1970, O. 67 r. 9(3).

This was an application to set aside the registration of a judgment of the High Court in England which was obtained after leave had been given to enforce an arbitrator's award. The judgment debtors alleged that they had not agreed to a term providing for arbitration and for acceptance of the jurisdiction of the English courts.

Held: (1) on the facts there was a contract between the parties which included the provisions for arbitration and the jurisdiction of the English courts and there was material before the High Court in England justifying the conclusion that leave should be granted to enforce the arbitrator's award as a judgment of the English High Court;

(2) in all the circumstances of the case there was nothing to show that it would not be just and convenient for the English judgment to be enforced in Singapore and there were therefore no sufficient grounds for setting aside the registration of the English judgment.

Cases referred to:-

(1) *Heyman & Anor.* v. *Darwins Ltd.* [1942] A.C. 366, 367.

(2) *M. Golodetz* v. *Schrier & Anor.* (1947) 80 Ll.L.R. 647.

(3) *Frank Fehr & Co.* v. *Kassim Jivraj & Co. Ltd.* (1949) 82 Ll.L.R. 673.

(4) *Reuss & Anor.* v. *Picksley & Anor.* L.R. (1866) 1 Exch. Cases 342.

(5) *Smith* v. *Neale* 140 E.R. 337.

(6) *Plasticmoda Societa per Azioni* v. *Davidsons (Manchester) Ltd.* [1952] Ll.L.R. 539.

ORIGINATING SUMMONS.

C. Arul for the applicants.

G. Pannirselvam for the respondents.

Winslow J.: This is an application on the part of the judgment debtors (hereinafter referred to as "Sinitrada") to set aside the order for registration made on 24th September, 1971 in Singapore of a judgment obtained in favour of the judgment creditors (hereinafter referred to as "Bunge") in the High Court of England on 27th April, 1970.

The said judgment was obtained after leave had been given to Bunge to enforce an arbitrator's award made in London dated 20th November, 1969 in the total sum of £3,360 11s. 7d. in the same manner as a judgment or order of the High Court of England to the same effect, together with taxed costs.

The order for registration of the said judgment in Singapore dated 24th September, 1971 was obtained *ex parte* under section 3 of the Reciprocal Enforcement of Commonwealth Judgments Act (Cap. 24) (hereinafter referred to as the "Act") which provides that the High Court of Singapore may order such an English judgment to be registered if, in all the circumstances of the case, it thinks it is just and convenient that the judgment should be enforced in Singapore and subject to the provisions of this section. This